IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

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:: JUDGMENT ::

(1) Smt. Heera Bai & Ors. Vs. Rajasthan State Road Transport Corporation & Anr.

S.B. CIVIL MISC. APPEAL NO.69/1993.

Against the award dated 21.05.1992 made by the Motor Accidents Claims Tribunal, Rajsamand in Claim Case No.68/1988.

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(2) Velji Bhai Savji Bhai Aayar Vs. Parmeshwar Singh & Anr.

S.B. CIVIL MISC. APPEAL NO.305/1993.

Against the award dated 03.06.1993 made by the Motor Accidents Claims Tribunal, Rajsamand in Claim Case No.70/1988.

Date of Judgment :: 4th December 2006.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. G. Vaishnav, for the appellants.
Mr. B.S. Bhati, for the respondent-RSRTC.

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BY THE COURT:

These two appeals though arise out of different awards made by the Motor Accidents Claims Tribunal, Rajsamand

respectively dated 21.05.1992 in Claim Case No.68/1988 and dated 03.06.1993 in Claim Case No.70/1988 but relate to the same accident and involve common questions particularly regarding responsibility towards accident; hence were heard together and taken up for disposal by this common judgment.

Ramji Bhai, about 45 years in age, engaged as driver on a car bearing registration No. GJD 8755 died on 27.12.1987 when the aforesaid car driven by him met with an accident on the bridge over Khari river, between Nathdwara and Kankroli in District Rajsamand due to collision with a bus bearing registration No. RNP 1836 driven by Parmeshwar Singh and belonging to the Rajasthan State Road Transport Corporation (RSRTC).

Claim Case No.68/1988 was filed by the wife and four minor children of Ramji Bhai seeking compensation on account of his accidental death stating the accident having occurred for rash and negligent driving of the aforesaid bus RNP 1836 (hereinafter referred to as 'the roadways bus'). In this case proceedings against the bus driver Parmeshwar Singh were dropped on 05.07.1989. No Fault Liability award under Section 92-A of the Act of 1939 was made on 02.09.1989. The non-applicant in its reply to the claim application asserted that the accident occurred for rash and negligent driving by the deceased car

driver under the influence of liquor and it was also alleged that the owner and insurer of the car were necessary parties. The Tribunal framed the following issues for determination of the questions involved in the case:-

> "1. क्या दिनांक 25-12-87 को रात 11.30 पी.एम. पर विपक्षी सं. 1 की बस नम्बर आर.एन.पी. 1836 को उसके चालक ने खारी नदी के पुल पर उत्तावले पन व लापरवाही से चला कर कार जी.जे.डी 8755 के टक्कर मार दी जिससे श्री राम जी भाई कार चालक की मृत्यु हो गई ?
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> 2. क्या इस दुर्घटना के फलस्वरूप प्रार्थी विपक्षी सं. 1 से सामान्य व विशिष्ठ क्षति के रू. 3,50000/- प्राप्त करने के अधिकारी हैं?
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> 3. क्या कार मालिक व कार की बीमा कम्पनी आवश्यक पक्षकार है?
>
> 4. अनुतोष ?"

In evidence, Smt. Heera Bai, wife of the deceased was examined as PW-1 and one Devi Lal, an alleged occupant of the roadways bus at the time of accident was examined as PW-2. The claimants also produced on record documentary evidence including certified copies of the police investigation papers. The non-applicant adduced no evidence whatsoever.

After hearing the parties and examining the evidence, learned Judge of the Tribunal observed that though the non-applicant has not adduced any evidence but it was

required of the claimants to have established rashness and negligence on the part of the non-applicant and no presumption could be drawn in that regard; and there being no cogent and convincing evidence about the fault of the bus driver, the claimants have failed to prove his negligence. Hence, issue No.1 was decided against the claimants. The learned Judge observed in issue No.2 that the claimants would be entitled for compensation in the sum of Rs.74,000/- in case the appellate court would come to a different conclusion on issue No.1. The non-applicant did not press issue No.3 regarding non-impleadment of car owner and insurer. As a consequence of finding on issue No.1, the claim application was ordered to be rejected by the impugned award dated 21.05.1992.

On the other hand, Claim Case No.70/1988 was filed by the owner of the aforesaid car GJD 8755 claiming compensation for the property damage suffered by him again stating that the accident was caused by rash and negligent driving of the roadways bus. It appears that in the first place, this case proceeded ex parte against the non-applicants and on 18.11.1989 ex parte award in the sum of Rs.30,000/- was made in favour of the claimant. However, the said ex parte award was set aside on 24.11.1990 and the case was restored to its number.

Thereafter, on 23.03.1991 statement of witnesses PW-1 Tara Chand and PW-2 Velji Bhai already recorded ex parte were adopted as their examination-in-chief and they were permitted to be cross-examined and then the matter was posted for evidence of the non-applicants. On 03.04.1992 the roadways bus driver Parmeshwar Singh was examined as NAW-1 and on 22.04.1993 the bus conductor Suresh Kumar, was examined as NAW-2. Record of the claim case shows that issues were framed in this case as available at page A/24 of the record but it is difficult to make out as to how and on what date, these issues were framed inasmuch as the non-applicants in this claim case filed no reply. Be that as it may, the learned Judge proceeded to decide this claim case on 03.06.1993 and on issue No.1, again relating to the responsibility towards this accident, found with reference to the statements of NAW-1 and NAW-2 that the accident was caused by rash and negligent driving of the car and there was no responsibility of the bus driver towards the accident. The learned Judge also referred to the fact that the other Claim Case No.68/1988 relating to the same accident had already been decided on 21.05.1992 wherein also it was held that the claimants have failed to establish negligence of the bus driver. The learned Judge of course observed in issue No.2 that the car suffered damage of Rs.66,815/- but with reference to the

findings on issue No.1 rejected the claim application.

The claimants-appellants in their respective appeals have assailed the findings on responsibility towards the accident and have claimed compensation.

Although the records relating to these two claim cases carry different status qua the parties, pleadings and evidence; and the two claim cases have been tried separately and have been decided on different dates; and ordinarily evidence of one case deserve not to be considered for the other unless made a part of the record; yet in view of the core question about the responsibility towards the same accident being common to both the cases and in the later award dated 03.06.1993, findings of the previous award dated 21.05.1992 having also been relied upon, it appears appropriate to examine cumulative effect of the record of these two cases. There is yet another strong reason for conjoint consideration of the record of these two cases. In Claim Case No.68/1988, the non-applicant, owner of the roadways bus choose not to lead any evidence at all for which an adverse inference arises against it; and upon such drawing of adverse inference and reaching a finding on that basis, consideration of the evidence led by the non-applicants in the later Claim Case No.70/1988 would have been adversely affected. Therefore, in the interest of justice, both the matters are examined consolidated.

The accident in question occurred on a river bridge in the winter night of 27.12.1987 at about 11:30 p.m. The car in question was proceeding towards Nathdwara from Kankroli; and the roadways bus was coming in the opposite direction. According to the claimants, the bus driven rashly and negligently hit the car; and the accident caused damage to car and fatal injuries to its driver Ramji Bhai. As noticed above, no reply was submitted in Claim Case No.70/1988 by the non-applicants, even though both the driver and owner of the bus were parties thereto. The only reply available on record is on behalf of the owner of the bus as made in Claim Case No.68/1988 wherein it was asserted that the car driver was under the influence of liquor and had no control over the vehicle; that the bus of RSRTC was going from Udaipur to Jaipur on the bridge over Khari river when the non-applicant No.2 (the driver of the bus) spotted the wavering car approaching on the wrong side; that the bus driver took the bus towards driver's side but the car crashed under the body of the bus on the conductor's side; that the rear wheel of the bus was swept off ground; the bus skidded towards driver side and fell down the river; and that the accident occurred for the negligence of the car driver. These core averments on the version of the non-applicants concerning the accident could usefully be noticed thus:

"(4) यह कि प्रार्थना-पत्र के पेरा 10 गलत होकर अस्वीकार है । वास्तविकता यह है कि कार चालक शराब के नशे में गाडी चला रहा था उसका कार पर नियन्त्रण नही था । खारी नदी के पूल पर निगम बस नम्बर आर.एन.पी. 1836 उदयपुर से जयपुर जा रही थी । विपक्षी संख्या 2 ने कार को लहराते हुए आते देखा तो बस को थोडा धीरे किया किन्तु कार तीव्र गति से रोग साईड मे आगे बढती जा रही थी । तब बस चालक ने बस को चालक साईड मे लिया इतने मे कार तेजी से आकर परिचालक साईड से बाडी के नीचे घुस गई और बस का पिछला पहिया ऊंचा हो गया और बस भी चालक साईड मे खीच गई और नदी मे जा गिरी । यह दुर्घटना कार चालक की लापरवाही के कारण घटित हुई ।"

(emphasis supplied)

The claimant No.1 Smt. Heera Bai examined as PW-1 in Claim Case No.68/1988 was admittedly not the eye-witness to the accident. The claimants examined one Devi Lal as PW-2 who was allegedly travelling in the bus in question going from Nathdwara to Sardargarh who stated that the roadways bus was fully occupied and was proceeding at a high speed; that it was proceeding properly and as soon as reached near the bridge, a car came from the side of Kankroli (i.e. the opposite direction); and that the car rammed under the bus. He has stated that the roadways bus was proceeding at a speed of about 80-90 (obviously the reference is to kilometres per hour) that led to the accident; that the bus climbed upon the car and while hitting against the railing of the bridge fell into the river. He has expressed his inability to say

as to who was at fault. He has stated in cross-examination that he had not seen the car ramming under the bus and noticed only upon the collision and immediately the bus climbed upon the car and plunged into the river; that there were several people standing in the bus and he was unable to see the car but had seen its lights and he was unable to say about direction of the car; and that speed of the bus was stated by him only at an estimate. On the whole, the statement of this witness Devi Lal, PW-2, is not of much assistance in reaching to any conclusion about the responsibility towards accident. As already noticed, no evidence in rebuttal was led by the non-applicant in this case.

However, it seems appropriate to examine the oral evidence in Claim Case No.70/1988 though, as noticed above, no reply was filed by the non-applicants in this case. On the part of the claimant a motor garrage foreman Tarachand has been examined as PW-1 in relation to the assessment of damage to the car and the claimant himself as PW-2. Testimony of both these witnesses is of no relevance to the question regarding responsibility towards the accident.

Parmeshwar Singh, driver of the roadways bus, has been examined as NAW-1 in Claim Case No.70/1988. According to him, when he came upon the bridge, a car from the opposite direction came wavering in a brisk speed; he was

in a speed of about 40-45 (kilometres per hour); that he cut down the speed of his vehicle; that the car came on the wrong side and rammed into the rear wheels of his vehicle; that his vehicle having lost balance hit against the bridge and fell down causing injuries to himself and the passengers. The bus driver stated thus:

> "खारी नदी के पुल पर चढा और सामने से एक कार लहराती हुई आ रही थी । कार बहुत तेजी से आ रही थी । मैं पुल पर चढा तब 40-45 की मेरी गाड़ी की स्पीड थी । सामने कार आती हुई देखकर मैंने गाड़ी को आहिस्ता कर दी । कार रोंग साईड में आकर मेरी गाड़ी के पिछले के टायरों में घुस गई । उससे मेरी गाड़ी टेडी हो गई । गाड़ी टेडी होने मे मेरी बस का बेलेन्स बिगड़ गया । मेरी बस पुल से टकरा कर नीचे गिर गई ।"

The bus driver maintained that the car driver was drunk; and that the accident occurred for the mistake of car driver only.

In cross-examination, the bus driver admitted that the police had filed challan against him and the case was pending; and stated that he came to know from Rajasthan Patrika that the car driver was under the influence of liquor. He stated ignorance about the condition of the car as shown in photographs Ex.2 and 3 as he was not available at the site and remained hospitalised for four days; and admitted that the roadways bus was an "Express" one and that the accident occurred on a plain road.

The non-applicants have also produced Suresh Kumar as NAW-2, said to be the occupant of the bus in question as its conductor. He stated that when the speed of the bus was suddenly lowered down on the river bridge, he looked around and noticed that a wavering car was coming on; that the bus driver attempted his best to save the car but the car hit against the rear wheel on the conductor side of the bus; that for loosing its balance the bus went down breaking the bridge; and that he lodged the report Ex.5. In the words of Suresh Kumar:

> "हमारी बस के ड्राईवर ने कार को बचाने की काफी कोशिश की, लेकिन कार बस के कण्डक्टर साईड के पीछे के पहिये से टकरा गई, और बस पुलिया को तोड़ती हुई नीचे गिर गई, क्योंकि बस का बैलेन्स का बिगड़ गया।"

In cross-examination, NAW-2 Suresh Kumar stated that he was checking the tickets and had reached upto the gate of the bus; that it was wrongly stated in Ex.5 that the bus collided with the car whereas in fact the car collided with the bus; that the speed of the bus was about 20 kilometres per hour; that he was not aware about the width of the bridge or about the speed of the car; and that on the National Highway minimum speed was of 60 kilometres per hour.

The learned Judge of the Tribunal while deciding Claim Case No.68/1988 has chosen not to refer to any part of

documentary evidence at all and after analysing the statement of PW-2 Devi Lal found that the claimants have failed to establish fault of the bus driver. In Claim Case No.70/1988 on the other hand the learned Judge made a cursory reference to the Report Ex.5 and then to the fact that the claimant has not produced any eye-witness and then with reference to the statements of NAW-1 Parmeshwar Singh and NAW-2 Suresh Kumar, driver and conductor of the bus, observed that the bus was being driven in a normal speed that was cut down on spotting the car; that the car came wavering and hit against the bus and, therefore, there was no fault with the bus driver.

Having examined the entire evidence available on the record of both the claim cases, this Court is clearly of opinion that the findings in both the cases on responsibility towards the accident cannot be sustained.

It is an admitted position that the accident occurred at about 11:30 p.m. in the winter night of 27.12.1987 on a river bridge. Consistent case of the non-applicants, whether as stated in the reply averments in Claim Case No.68/1988 or as attempted to be made out by way of evidence without reply in Claim Case No.70/1988, has been that the car in question came from the opposite direction wavering on the wrong side and rammed into the body of the bus on conductor's side. A simple visualisation of the case

set up by the non-applicants, driver and owner of the bus, makes it clear that for such occurrence the bus was required to be on its extreme right-hand side and similarly the car was also required to go on its extreme right-hand side; that is to say that both the vehicles ought to have been at the extreme of their wrong side. Else, there cannot be any question of the on-coming car hitting against the rear wheel of the bus on its conductor's side.

The phrase 'conductor's side of the bus' has obviously been used in contradistinction to 'driver's side'; and, in the context of a four-wheeler bus, it refers to the side to the left of the driver. For an oncoming car on a bridge ramming into the rear wheel of the bus on the conductor's side means that not only both the vehicles took to the extreme of their wrong side but the car proceeded yet ahead and crossed at least half of the body of the bus before crashing into the rear wheel.

The accident did not occur in the manner suggested by the non-applicants for several reasons that appear when the salient features are examined with reference to the documentary evidence available on record. The site inspection report Ex.6 makes out that the bridge in question was 24 feet wide. On a running highway and that too on a river bridge, it seems highly improbable that both the vehicles

proceeded ahead on their right-hand side (i.e. wrong side) to this extent that the car reached upto the rear wheel of the bus on the conductor's side. This assertion is proved to be wrong for another significant reason that had the car intruded into the bus in this manner and the bus was already taken to its extreme right-hand side, then, in the first place the bus could not have reached again to its left-hand side so as to scratch about 24 feet length of the bridge on its left-hand side and then to go again right so as to fall down the bridge on the right-hand side. The fact that the bus scratched a long length of about 24 feet on its left-hand side of the bridge is specifically stated and shown in the site inspection report (Ex.6). The story about the bus having been hit on the conductor's side by the car not only remains hollow but is falsified by the site inspection memo. Yet further, the photographs of the damaged car as produced in Claim Case No.70/1988, the only case where the non-applicants examined their driver and conductor, show a feature distinctly apparent that the car received the hit largely on its driver side. The story that both the drivers took to their right-hand side and then the car rammed into the rear wheel of the bus is demonstrated to be wrong for the simple reason that in the scenario suggested by the non-applicants for the car it would have been the side opposite to its driver that would have

received the major burden of impact and not the driver's side. Condition of the car is simply to the opposite; it has been the driver's side of the car that has been smashed.

Unfortunately, in this case, the investigating agency has not reported on the conditions of the respective vehicles in detail and the seizure memo (Ex.4) as produced in Claim Case No.68/1988 in relation to both the vehicles is too cryptic but it has of course been stated that the front of the bus was damaged.

Dropping down the speed of the bus does also not appear plausible a suggestion because if the bus was doing something about 20 kilometres per hour as suggested by the conductor of the bus; and if the car hit only against its rear wheels,then the bus would have been brought to immediate halt and could not have travelled so long as to brush against the bridge for 24 feet on its left side and then to take to the right-hand side yet ahead and then to go down the bridge. The distance covered by the bus after the impact shows that the bus was in a brisk speed.

In the overall scenario, findings of the Tribunal whether made in Claim Case No.68/1988 or in Claim Case No.70/1988 exonerating the bus driver altogether of his responsibility cannot be approved. In the ordinary circumstances, in such kind of an accident the fault lies with

both the drivers of on-coming vehicles; and the accident is brought about for omission of care and caution by both the drivers.

Learned counsel Mr. B.S. Bhati appearing for RSRTC has strenuously contended that their vehicle, the bus, was proceeding in its correct side; its having gone to wrong side is not proved by any witness; nobody has deposed that the bus was in higher speed; and that from the evidence on record what is established is that the car hit against the bus; and, therefore, the Tribunal has not erred in exonerating the bus driver of any liability towards the accident. The submissions sought to pressed by the learned counsel regarding the side of the road taken by the bus cannot be accepted being directly in conflict with the very case set up by RSRTC as noticed above. The submissions regarding moderate or lower side speed of the bus are also in conflict with the fact situation available on record, particularly as discernible from the site inspection memo.

When examined in the context of the scene of occurrence and damage of the front of the two vehicles, as shown by the photographs of the car and as reported in seizure memo, preponderance of probabilities lean in favour of the finding that the vehicles hit against each other head-on on a running highway at a bridge in winter night for omission of

care and caution on the part of both the drivers.

Having regard to the overall circumstances of the case, this court is of opinion that the accident in question occurred for omission of care on the part of both the drivers; the fault on the part of the bus driver even higher than 50% contribution to the accident cannot be ruled out. The Tribunal has obviously been in error in not examining the record and abruptly concluding that the claimants have not been able to establish the negligence of the roadways bus driver. Findings on issue No. 1 in both these cases cannot be approved.

Having found the accident to have occurred for nearly equal contribution of the two drivers with likelihood of the bus driver being more at fault, this court is clearly of opinion that the respondent RSRTC remains liable at least to the extent of 50% of the loss suffered by the claimants.

QUANTUM OF COMPENSATION:

Claim Case No. 68/1988

In Claim Case No. 68/1988 relating to the death of Ramji Bhai, this court is of opinion that the quantification as suggested by the Tribunal in issue No. 2 taking loss of contribution only at Rs. 300/- per month does not seem appropriate. The deceased was about 45 years in age and

has left behind wife, about 35 years in age and four minor children. The deceased was engaged as driver on the car and his monthly income at Rs. 1,500/- does not seem exaggerated in the context of the period of incident, of the year 1987. Therefore, loss of contribution for the claimants could reasonably be considered at Rs. 1,000/- per month after deducting one-third on personal expenditure of the deceased leading to a multiplicand of Rs. 12,000/- per annum and even on application of lower side multiplier of 13, the pecuniary loss stands at Rs. 1,56,000/-. The wife of the deceased could be allowed Rs. 10,000/- towards loss of consortium and the children Rs. 5,000/- each for loss of love, affection and guidance of their father. Hence, non-pecuniary loss stands at Rs. 30,000/-. Funeral expenses also deserve to be allowed at Rs. 2,000/-. Total loss, therefore, comes to Rs. 1,88,000 (156000 + 30,000/- + 2,000/-); and deducting Rs. 15,000/- received by the claimants under No Fault Liability, their loss stands Rs. 1,73,000/-. As noticed above, the claimants are entitled to 50% of the loss suffered; hence, they are entitled for compensation in the sum of Rs. 86,500/-.

The claim application was filed on 30.04.1988 and if the award of compensation were made within a reasonable time, the claimants would have been allowed interest at the then prevailing rather higher rate.

However, in the overall facts and circumstances of the case and in view of present prevailing rates of interest, this Court is of opinion that ends of justice shall meet if the claimants are allowed interest at the rate of 9% per annum from the date of filing of claim application.

Claim Case No. 70/1988

So far the case of property damage is concerned, though the owner of the vehicle has produced an estimate Ex. 1 that puts likely repairs expenditure of Rs. 64,815/- and has alleged having spent Rs. 15,000/- in transportation of the vehicle to Ahmedamad but has not produced any payment receipt. The mechanic Tarachand AW-1 has stated that total repairs were likely to cost about Rs. 55-60 thousand. The owner Veljibhai has stated the vehicle to be of 1967 model; but the registration certificate Ex. 4 shows the year of manufacture of the car as 1963. Obviously, the car was nearly 25 years old at the time of accident. In the overall circumstances of the case, looking to the depreciated value of the car and the fact the car was damaged to a large extent, it appears appropriate to estimate the loss at Rs. 30,000/-.

Again, as noticed above, the claimant is entitled to 50% of the loss suffered; hence, the claimant is entitled for compensation in the sum of Rs. 15,000/-. In this case too the claimant

deserves to be allowed interest @ 9% per annum from the date of filing of claim application.

As a result of the aforesaid, these appeals succeed and are allowed; the impugned awards are set aside; and the claim applications submitted by the claimants are partly allowed thus:

(a) (i) In claim case No. 68/1988 (CMA No. 69/1993) the wife and children of the deceased Ramjibhai are awarded compensation in the sum of Rs. 86,500/- together with interest @ 9% per annum from 30.04.1988, the date of filing of claim application;

(ii) It shall be required of the respondent RSRTC to deposit the amount payable under the award within 30 days from today with the Tribunal. Upon deposit the Tribunal shall make apportionment in the manner that 40% of the award amount shall go to the wife of the deceased and 15% to each of the children. 50% of the amount for each of the claimants be placed in a Monthly Income Scheme of Post Office for a minimum period of six years and the respective claimants shall be entitled to receive periodical

interest thereupon. The remaining amount be paid cash to the respective claimants.

(b) (i) In claim case No. 70/1988 (CMA No. 305/1988) the claimant Veljibhai is awarded compensation in the sum of Rs. 15,000/- together with interest @ 9% per annum from 19.05.1988, the date of filing of claim application;

(ii) It shall be required of the respondent RSRTC to deposit the amount payable under the award within 30 days from today with the Tribunal. Upon deposit such amount may be paid cash to claimant.

(c) Parties shall bear their own costs of these appeals.

(DINESH MAHESHWARI), J.

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